

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHANNON CARTER,

Plaintiff,

RENEE BAKER, *et. al.*,

Defendants.

Case No. 3:16-cv-00481-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 24) ("R&R") relating to Defendants' motion to dismiss ("Motion") (ECF No. 18). The Magistrate Judge recommends that Defendants' Motion be denied in part and granted in part. (ECF No. 24.) The parties had until May 17, 2018 to file their objection. (*Id.*) To date, no objection to the R&R has been filed.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (disregarding the

standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district courts are not required to review "any issue that is not the subject of an objection."). Thus, if there is no objection to a magistrate judge's recommendation, then the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to which no objection was filed).

9 The Magistrate Judge recommends that Defendants' Motion be granted as to
10 claims against former Nevada Department of Corrections ("NDOC") Director James. G.
11 Cox in his personal capacity and be denied as to the remaining Defendants in their
12 official capacities. (ECF No. 24 at 5-7.) The Magistrate Judge further recommends that
13 the current NDOC Director James Dzurenda replace Cox in this case pursuant to Fed.
14 R. Civ. P. 25(d). Because the parties have failed to object to the R&R, the Court will
15 adopt the R&R.

16 It is therefore ordered, adjudged and decreed that the Report and
17 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 24) is accepted and
18 adopted in its entirety.

19 It is further ordered that Defendants' motion to dismiss (ECF No. 18) is denied in
20 part and granted in part. It is granted with respect to claims against Defendant Cox in
21 his personal capacity. It is denied with respect to claims against the remaining
22 Defendants in their official capacities.

23 It is further ordered that, to the extent Cox is sued in his official capacity, Cox will
24 be replaced by the current NDOC Director James Dzurenda.

25 DATED THIS 22nd day of May 2018.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE